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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,005	01/31/2005	Peter Aranyi	SSL0089-US-PCT	8861

5487 7590 02/20/2007
ROSS J. OEHLER
SANOFI-AVENTIS U.S. LLC
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER, NJ 08807

EXAMINER

GRAZIER, NYEEMAH

ART UNIT	PAPER NUMBER
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1626

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	02/20/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/20/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPatent.E-Filing@sanofi-aventis.com
andrea.ryan@sanofi-aventis.com

Office Action Summary	Application No. 10/507,005	Applicant(s) ARANYI ET AL.	
	Examiner Nyeemah Grazier	Art Unit 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-72 is/are pending in the application.
- 4a) Of the above claim(s) 35-37, 41-43, 46-48, 55-57 and 59-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-33, 38, 39 and 50-53 is/are rejected.
- 7) ☒ Claim(s) 34, 40, 44, 45, 49, 54, and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/7/04, 3/25/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION
FIRST ACTION ON THE MERITS

I. ACTION SUMMARY

Claims 30-74 are currently pending. Claims 35-37, 41-43, 46-48, 55, -57, 59-74 are withdrawn from further consideration by the Examiner because said claims are drawn to a non-elected invention. 37 C.F.R. § 1.142(b).

II. PRIORITY

This application is a 371 of PCT/HU03/00017 filed March 4, 2003 and claims benefit to foreign application HUNGAGRY P 0200849, filed March 6, 2002. However, a certified English translation of the foreign document has not been filed.

III. INFORMATION DISCLOSURE STATEMENT

The information disclosure statements (IDS) submitted on March 25, 2005 and September 7, 2004 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements have been considered by the examiner.

IV. RESTRICTION/ELECTION

A. Election: Applicant's Response

Applicant's election of Group I, claims 30-58 in the response filed on January 24, 2007 is acknowledged. The applicant traverses the restriction on the grounds that the core structure is a "significant structural element" and the compounds possess similar activities. Additionally, the applicant asserts that a search of the claims in its entirety should not impose any undue burden on the Examiner. The applicant's arguments have been fully considered and are not persuasive as there is a lack of Unity of Invention as stated in Action mailed on July 25, 2006.

Additionally, because of the plethora of classes and subclasses in each of the Inventions, a serious burden is imposed on the examiner to perform a complete search of the defined areas. Lack of restriction would impose a serious burden on the Examiner. Thus, based on the abovementioned rationale, the restriction as set forth in the instant application is proper.

In sum, Formula (I) have diverse chemical structures, different chemical properties, different modes of action, and different effects and reactive conditions and is therefore recognized in the art as being distinct from one another. MPEP §§ 806.04, 808.01. Additionally, the level of skill in the art is not such that one invention would be obvious over the other invention, i.e. they are patentable over each other. Chemical structures, which are similar, are presumed to function similarly, whereas chemical structures that are not similar are not presumed to function similarly. The rebuttable presumption, that similar chemical structures behave similarly, may be overcome by scientific reasoning or evidence showing that the structure of the prior art would not have been expected to function as the structure of the claimed invention. Note that in accordance with the holding of Application of Papesch, 50 CCPA 1084, 315 F.2d 381, 137 USPQ 43 (CCPA 1963) and In re Lalu, 223 USPQ 1257 (Fed. Cir. 1984), chemical structures are patentably distinct where the structures are either not structurally similar, or the prior art fails to suggest a function of a claimed compound would have been expected from a similar structure. The requirement is still deemed proper and is therefore made FINAL.

The applicant has elected Group I, Claims 30-58 (in part) wherein B represents formulae (1) and (2); R1 represents a nitrogen containing aromatic moiety consisting of one or two aromatic rings; which is optionally mono- or disubstituted by a substituent independently elected from the group consisting of C1-4 alkyl, C1-4 alkoxy, halogen, trihalogenmethyl, methylthio, nitro, cyano, amino, and phenyl group; and wherein R2 and R3 are defined in claim 1.

V. REJECTION(S)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1626

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 30-33, 38, 39, 50, 51, 52, and 53 rejected under 35 U.S.C. 102(a) as being anticipated by Hayakawa et al., JP 2002-264450 (US Equivalent US 2005/0176771 A1). The invention is disclosed as a specie in Table 5, Example 11. See JP 2002-264450, p. 20, Example 11; See also, US 2005/0176771A1, p. 14, Table 5, Example 11. The rejection may be obviated by either (1) providing a certified English translation of HUNGARY P0200849 to get the benefit of foreign filing date; or (2) amending the claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 30-33, 38, 39, 50, 51, 52, and 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Haffner, et al. WO 2003/002553 A3 (US 2004/0242636 A1). The instant invention is taught in the examples. See, e.g., Haffner et al., US 2004/0242636 A1, p. 29, example 24.

VI. OBJECTION(S)

Specification

- The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
- The specification is also objected to because the disclosure does not contain information regarding the continuing data. An application data sheet (ADS) was not filed in the instant application and therefore the continuity data is required.

Claim Objections

- Claims 31-34, 38-40, 44, 45, 49-54, and 58 are objected to as said claims depend from a rejected based claim.

VII. CONCLUSION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nyeemah Grazier whose telephone number is (571) 272-8781. The examiner can normally be reached on Monday through Thursday and every other Friday from 8:30 a.m. - 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (571) 272 - 0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 1626

Very truly yours,



Nyeemah Grazier, Esq.

Patent Examiner, Art Unit 1626

UNITED STATES PATENT AND TRADEMARK OFFICE

400 Dulany Street

Alexandria, VA 22314-5774

Tel. No.: (571) 272-8781

KAMAL A. SAIED, PH.D.
PRIMARY EXAMINER



Joseph K. McKane

Supervisory Primary Examiner, Art Unit 1626

UNITED STATES PATENT AND TRADEMARK OFFICE

400 Dulany Street

Alexandria, VA 22314-5774

Tel. No.: (571) 272-0699